

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

-
W.P. NO. 18696 of 2002

-
DATED: 08-08-2007

Between:-

Sri Jayalakshmi Spinning Mills Ltd. Tobacco Colony, Mangalagiri
Road, Guntur, rep. By its Chief Accounts Officer Sri M.Venkat Rao.

...PETITIONER

And

Southern Power Distribution Company of Andhra Pradesh Ltd.
Represented by its Managing Director and another.

..RESPONDENTS

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

W.P. NO. 18696 of 2002

-

-

ORDER

-

Aggrieved by the order of the Superintending Engineer, Operation Circle, Guntur dated 28-08-2002 calling upon the petitioner to pay an amount of Rs. 61,18,654/- towards shortfall claim for the period from 12-10-2001 to 06-03-2002, based on the M.R.I. report, the present writ petition is filed.

While several contentions were urged by Sri K. Gopala Choudary, learned counsel for the petitioner, it is wholly unnecessary to take note all of them except his contention that the show cause notice is bereft of necessary particulars rendering the opportunity given to the petitioner to show cause a meaningless exercise.

The Assistant Divisional Engineer, Tenali, vide proceedings dated 25-03-2002, informed the petitioner that the service connection was inspected and it was observed by the M.R.T wing on 05-03-2002 that the current in R-Phase was zero, that the R-Phase CT had failed, that the failed CT was replaced on 06-03-2002, that

from the M.R.I. data it was found that the R-Phase CT had failed on 12-10-2001 resulting in only 66% of total consumed energy from 12-10-2001 to 06-03-2002 being recorded and hence the back billing was raised for the unrecorded units and the unrecorded maximum demand from 12-10-2001 to 06-03-2002. The Assistant Divisional Engineer informed that the meter installed was not functioning correctly, that it was recording less energy consumption, that he had assessed the energy consumed during the defect period in the meter as per Clause 22.3.3.3 of the terms and conditions of supply. The petitioner was called upon to submit his representation, regarding billing of an amount of Rs. 61,18,654/- for the period from 12-10-2001 to 06-03-2002, to the Superintending Engineer, Operation, A.P.S.P.D.C.L. Guntur within 15 days from the date of the notice failing which it would be construed that the petitioner had no objection for the assessment.

In their letter dated 09-04-2002 the petitioner informed the Superintending Engineer that the MRI report, based on which the assessment is said to be made, was neither shown nor supplied to them. They requested that the MRI data be furnished to enable them to study the same before submitting their representation. On a copy of the MRI report being furnished the petitioner, in its explanation dated 13-05-2002, stated that they had requested the respondents to furnish the original print of MRI data for their study to assess the % of error before and after failure of CT on 12-10-2001. The petitioner

further informed that the MRI report received by them was not comprehensive, as it did not possess the required information desired by them.

Thereafter, the impugned order came to be passed by the Superintending Engineer, wherein he noted that the MRI data was comprehensive, that the failure of CT had resulted in missing of current component and thereby the consumption in that phase was not recorded which equals to 33.3% of the actual consumption, that on verifying the consumption pattern, the consumption prior to October, 2001 was around 9 lakh units and the maximum demand was around 1500 KVA, that during the R-phase CT defective period i.e. October, 2001 to March, 2002 the consumption was around 6 lakh units and the maximum demand recorded was around 1100 KVA which clearly showed that there was 33.3% reduction in consumption and recording of the maximum demand and thereupon the back billing assessment was made for the 'R' CT defective period only i.e. 12-10-2001 to

06-03-2002 which is correct and that the amount payable by the consumer was Rs. 61,18,654/-

Sri K. Gopal Choudary, learned counsel for the petitioner, would refer to the relevant portion of the MRI data furnished to the petitioner to contend that, while there was an interruption in the recording of the meter on 12-10-2001 for a duration of 6706 minutes and again on 17-10-2001 for 65,535 minutes which is of approximately 45.51 days duration i.e. from 12-10-2001 to 02-12-2001, there was

nothing in the MRI reports furnished to the petitioner to indicate that the meter was continuously defective till 06-03-2002. Learned counsel would submit that, unless the petitioner is made aware of the case against him on the basis of which the respondents have calculated the amount payable by him of Rs. 61,18,654/- and the period during which the meter recording was said to be defective, the requirement of being given an opportunity of being heard under Clause 22.3.3.3 of the Terms and Conditions of Supply of Electricity would be rendered illusory. Learned counsel would submit that the impugned order is liable to be quashed primarily on the ground of violation of the rules of Natural Justice as also the Terms and Conditions of Supply of Electricity.

Sri V. Ajay Kumar, learned Standing Counsel appearing on behalf of the respondents, would, on the other hand, submit that, since the maximum duration for which the defect in the meter can be recorded is only 65,535 minutes, the M.R.I. report rightly indicated the period from 17-10-2001. Learned counsel would submit that after recording the defect for 65,535 minutes the system is incapable of recording defects for any duration thereafter and it is in such circumstances that the petitioner had been billed for the shortfall in consumption recorded from 12-10-2001 to 06-03-2002. Learned counsel would, however, fairly submit that the impugned show cause notice does not set forth these details since the respondents themselves came to know about the limitations in this

regard subsequently in the year 2003 on information being sought for from the manufacturer.

As per Clause 22.3.3.3 of the Terms and Conditions of Supply of Electricity, the Superintending Engineer is required to issue a show cause notice to the consumer indicating in detail the basis on which the assessment was made and advising the consumer to submit his representation. The said clause also requires a personal hearing to be afforded to the consumer. Since the details, which have now been urged by the Standing Counsel across the bar, do not find place in the show cause notice, the petitioner has been denied reasonable opportunity of being heard which is not only contrary to the stipulations in clause 22.3.3.3. of the Revised Terms and Conditions of Supply of Electricity but also in violation of the rules of Natural Justice. The impugned order is, therefore, liable to be quashed. Needless to state that quashing of the order would not preclude the respondents from putting the petitioner on notice, comply with the rules of Natural Justice as also the applicable provisions in this regard and thereafter take action in accordance with law.

Sri V. Ajay Kumar, learned Standing Counsel for the Corporation, would submit that, since the petitioner had himself admitted liability in his explanation dated 13-05-2002, he should at least be called upon to pay the admitted amounts. Learned counsel would refer to para-6 (b) of the petitioner's explanation dated 13-05-2002 in this regard. Sri K. Gopal Choudary, learned counsel for the

petitioner, on the other hand, would submit that what was stated by the petitioner in para-6 (b) of his explanation was only by way of illustration and did not amount to an admission with regards the actual consumption or the amount liable to be paid by the petitioner. Learned counsel would submit that, in any event, under para 6 (b) the amount liable to be paid was only Rs. 10,13,721/- whereas, pursuant to the interim order of this Court in W.P.M.P.No. 23497 of 2002 dated 26-09-2002, the petitioner had deposited a sum of Rs. 15,00,000/- far in excess of the said amount.

I do not see any reason to examine this controversy. Once the impugned order is quashed the petitioner is entitled to be informed of the case against him and given an opportunity of meeting those charges. Suffice it to hold that the amount of Rs. 15 lakhs already paid by the petitioner shall remain with the respondent and would depend upon the outcome of the final orders passed against him.

Sri K. Gopal Choudary, learned counsel for the petitioner, expresses apprehension that failure to fix any time limit for the respondents to issue the show cause notice would enable them to retain this amount of Rs. 15 lakhs for an indefinite period. I do not see any basis for such apprehension. I have no reason to doubt that the respondents, if they intend to retain this sum of Rs. 15 lakhs, would take prompt action against the petitioner by issuing show cause notice in this regard at the earliest. It is, however, made clear that in case

there is undue delay on the part of the respondents, it is always open to the petitioner to avail such remedies as are available to them under law.

The writ petition is, accordingly, disposed of. No costs.

RAMESH RANGANATHAN, J

Dated: 08-08-2007

vp